

STATE OF MONTANA COMPLIANCE SUPPLEMENT FOR AUDITS OF LOCAL GOVERNMENT ENTITIES	REF: C/T-1
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PROGRAM/SUBJECT: Cities and Towns - General Topics	

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

GENERAL/SELF-GOVERNING POWERS:

1. Compliance Requirements:

- A local government adopting a self-government charter may exercise any power, and may provide any services or perform any functions, not prohibited by the Montana Constitution, law, or charter. (Article XI, Section 6, of the Montana Constitution; MCA 7-1-101 & 102)
- A local government unit without self-government powers (i.e., a general power government) has powers provided or implied by law. The powers of incorporated cities and towns and counties must be liberally construed. (Article XI, Section 4, of the Montana Constitution)
- The powers of a self-government unit, unless otherwise specifically provided, are vested in the local government legislative body and may be exercised only by ordinance or resolution. All state statutes shall be applicable to self-government local units until superseded by ordinance or resolution. (MCA 7-1-104 & 105)

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

GENERAL/SELF-GOVERNING POWERS: - continued:

1. Compliance Requirements - continued:

- A local government with self-government powers is prohibited from exercising the powers listed at MCA 7-1-111 and 7-1-112. A listing of mandatory provisions that a local government with self-government powers is subject to is found at MCA 7-1-114. Included in this list is “any law regulating the budget, finance, or borrowing procedures and powers of local governments”.
- A local government with self-government powers is prohibited the exercise of any power in a manner inconsistent with state law or administrative regulation (i.e., the local government cannot establish standards or requirements which are lower or less stringent than those imposed by state law or regulation).
- A city or town is a body politic and corporate with the general powers of a corporation and the powers specified or necessarily implied in this title or in special laws heretofore enacted. (MCA 7-1-4101)
- A city or town has the power to make contracts that may be necessary to the exercise of its powers. (MCA 7-1-4105(3) & (4))

Suggested Audit Procedure:

- **None** – These compliance requirements are included for informational purposes only, to address questions related to general and self-governing powers of a city or town government.

MUNICIPAL CLASSIFICATION:

2. Compliance Requirements:

- Municipalities are classified as follows:
 - (a) Every city having a population of 10,000 or more is a city of the first class.
 - (b) Every city having a population of less than 10,000 and more than 5,000 is a city of the second class.
 - (c) Every city having a population of less than 5,000 and more than 1,000 is a city of the third class.
 - (d) Every municipal corporation having a population of less than 1,000 and more than 300 is a town.
 (MCA 7-1-4111)

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

MUNICIPAL CLASSIFICATION- continued:

2. Compliance Requirements-continued:

- Notwithstanding the provisions of 7-1-4111 as described above:
 - (1) every municipal corporation having a population of more than 9,000 and less than 10,000 may, by resolution adopted by the city council pursuant to 7-1-4114 through 7-1-4118, be either a first-class city or a second-class city;
 - (2) every municipal corporation having a population of more than 5,000 and less than 7,500 may, by resolution adopted by the city council pursuant to 7-1-4114 through 7-1-4118, be either a second-class city or a third-class city; and
 - (3) every municipal corporation having a population of more than 1,000 and less than 2,500 may, by resolution adopted by the city or town council, pursuant to 7-1-4114 through 7-1-4118, be either a city or town. (MCA 7-1-4112)
- If it appears from the last federal, state, county, city, or town census that the city or town contains the requisite population to be advanced, the council must thereupon by resolution declare, as the case may be, that the town is advanced to a city of the first, second, or third class; a city of the third class is advanced to a city of the second or first class; or a city of the second class is advanced to a city of the first class.

(Note: The city or town council must file a certified copy of such resolution in the office of the county clerk of the county and in the office of the Secretary of State.) (MCA 7-1-4113 through 7-1-4115)

- Whenever it appears from the last federal, state, county, city, or town census that the population of a city of the first or second class has decreased so as to be insufficient in number to entitle it to be a city of that class, the council must thereupon, by resolution declare that such city be reduced to a city of the second class or town as the case may be.

(Note: A certified copy of such resolution must be filed in the office of the county clerk and in the office of the secretary of state) (MCA 7-1-4118)

(Note to Auditor: The above section seems incomplete and does not appear to relate directly to the earlier sections dealing with the classes of municipalities and the procedures to advance a municipality if its population increases. This section refers only to cities of the first or second class and doesn't mention third class cities. It also refers to reducing a first or second class city to a second class city or town as the case may be. It makes sense to reduce a first class city to a second class city if the population has decreased. However, to reduce a second class city to a town, bypassing the third class city, seems inconsistent with the earlier sections above. It is also silent with regard to reducing a third class city to a town if the population

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

MUNICIPAL CLASSIFICATION- continued:

2. Compliance Requirements-continued:

reduction warrants it. If you discover a situation where the population has decreased sufficiently to require a municipality to be reduced in classification, we suggest that you discuss the situation with the entity's legal counsel to ensure that the municipality is appropriately classified.)

Suggested Audit Procedure:

- Review the municipality's population per the latest census to determine whether the municipality is properly classified based on the statutory criteria described above.

EMPLOYEE BOND COVERAGE:

3. Compliance Requirements:

- All elected or appointed city or town officers and employees must be bonded in the amount that is required by an ordinance. The amount must be based on the amount of money or property handled by the employee and the opportunity for defalcation. (MCA 2-9-802)
- The bond may cover an individual or be a blanket bond covering all officers and employees. (MCA 2-9-803)

Suggested Audit Procedure:

- Review the bond coverage for city or town officers and employees and determine if all individuals are bonded and if the bond coverage appears adequate.

4. Compliance Requirements:

- Bonds purchased by the city or town council or commission must be executed by responsible insurance or surety companies authorized and admitted to execute surety bonds in this state, or by a self-insurance pool insuring cities or towns as authorized by 2-9-211. (MCA 2-9-804)
- The premiums for all surety company bonds shall be a proper charge against the budgets of the city or town general fund or against the budgets of those city or town funds where the officer or employee renders service. (MCA 2-9-805)

Suggested Audit Procedure:

- Review the city's or town's bond coverage files to determine if the purchase of surety bonds was in compliance with the above requirements, and that the expense was charged against the appropriate budgets.

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

RECORDS RETENTION & DISPOSITION:

(**Note:** For more information on records retention schedules and records disposal procedures, go to: http://sos.mt.gov/RMB/Disposing_Records.asp#local)

5. Compliance Requirements:

- Upon order of the city or town council or commission and with the written approval of the local government records destruction subcommittee, provided for in MCA 2-6-403, a city or town officer may destroy records that have met the retention period contained in the local government records retention and disposition schedules and that are no longer needed by the office. (MCA 7-5-4124)
- A local government public record more than 10 years old may not be destroyed without it first being offered to the Montana historical society, the state archives, Montana public and private universities and colleges, local historical museums, local historical societies, Montana genealogical groups, and the general public. Notice must be provided to these entities at least 180 days prior to disposal of the public record. (MCA 2-6-405(1) & (2))
- Claimed records must be given to entities in the order of priority as listed above, and all expenses for the removal of claimed records must be paid by the entity claiming the records. In addition, the local government records committee, established in MCA 2-6-402, shall establish procedures by which public records must be offered and claimed and maintain a central registry of the entities described above who are interested in receiving notice of the potential destruction of public records pursuant to this section. (MCA 2-6-405)

Suggested Audit Procedures:

- If it is determined that city or town records were destroyed during the period under audit, determine that there was an order for destruction from the city or town council or commission and written approval from the local government records destruction subcommittee.
- If any records were destroyed that were more than 10 years old, determine that notice provided to the Montana historical society, the state archives, universities and colleges, local historical museums and societies, Montana genealogical groups, and the general public, at least 180 days prior to the disposal of the public record.
- If any records were claimed by one of the organizations listed above, determine that the claimed records were given to entities in the order of priority as listed above, and that all expenses for the removal of claimed records were paid by the entity claiming the records. In addition, determine that the procedures established by the local government records committee for offering and claiming public records pursuant to this section were followed.

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

FINANCIAL RECORDS, RECONCILIATIONS & REPORTS OF OTHER OFFICERS:

6. Compliance Requirement:

- The chief executive or governing body of a municipality may require any elected or appointed local government official or employee to: (a) maintain new or additional financial records; (b) perform new or additional financial reconciliations; and (c) submit new or additional financial reports. (MCA 7-6-612)

Suggested Audit Procedures:

- Determine if the chief executive or governing body has required other elected or appointed officials to maintain new or additional financial records, perform new or additional financial reconciliations, or submit new or additional financial reports.
- If so, determine that the records were maintained, the financial reconciliations performed, and the financial reports submitted in accordance with the chief executive's or governing body's directive.

ANNUAL FINANCIAL REPORT FILING:

7. Compliance Requirement:

- The governing body or managing or executive officer of a city or town must complete and present to the Department of Administration an annual financial report within 6 months after the close of each fiscal year. (MCA 2-7-503)

(**Note 1:** See MCA 7-6-611 & 612, for additional information on annual financial reports.)

(**Note 2:** The Department of Administration shall prescribe the form of the annual financial report. (MCA 7-6-611) If a local government fails to file a report as required above, the Department of Administration may issue an order stopping payment of any state financial assistance to the local government entity or may charge a late payment penalty. (MCA 2-7-517))

Suggested Audit Procedure:

- Determine whether the required annual financial report was completed and filed in a timely manner with the Department of Administration.

(**Note:** If the local government has not complied with these statutes, we recommend that an audit finding be included in your audit report.)

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

ACCOUNTING METHODS – BARS Chart of Accounts

10. Compliance Requirement:

- The Department of Administration shall prescribe the general methods and details of accounting for the receipt and disbursement of all money belonging to local government entities and shall establish the general methods and details of accounting in accordance with generally accepted accounting principles. All counties, cities, and towns shall utilize the chart of accounts prescribed by the Department in the budgetary, accounting, and reporting system (BARS) for Montana cities, towns, and counties (ARM 2.4.401; MCA 7-6-611 & 2-7-504)

Suggested Audit Procedure:

- Determine whether the local government is using the fund numbers, balance sheet accounts, revenue accounts, expenditure accounts, and objects of expenditure as outlined in the BARS chart of accounts.

(Note: If the local government has not complied with these statutes, we recommend that an audit finding be included in your audit report.)

LOCAL GOVERNMENT AS AN INTERNET PROVIDER:

8. Compliance Requirements:

- A political subdivision may act as an internet services provider if no private internet services provider is available within the jurisdiction served by the political subdivision; or the political subdivision provided services prior to July 1, 2001. (MCA 2-17-603) **(Note:** Lincoln County appears to be the only political subdivision that was providing internet service prior to 7/1/2001. (MACO Newsletter - 10/2001))
- A political subdivision may act as an internet services provider when providing advanced services that are not otherwise available from a private internet services provider within the jurisdiction served by the political subdivision. (MCA 2-17-603)
- If a private internet services provider elects to provide internet services in a jurisdiction where a political subdivision is providing internet services, the private internet services provider shall inform the political subdivision in writing at least 30 days in advance of offering internet services. Upon receiving notice the political subdivision shall notify its subscribers within 30 days of the intent of the private internet services provider to begin providing internet services and may choose to discontinue providing internet services within 180 days of the notice. (MCA 2-17-603)

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

LOCAL GOVERNMENT AS AN INTERNET PROVIDER - continued:

8. Compliance Requirements - continued:

- Nothing in MCA 2-17-603, may be construed to prohibit a political subdivision from offering electronic government services to the general public, or acquiring access to the internet from a private internet services provider in order to offer electronic government services to the general public. (MCA 2-17-603)

Suggested Audit Procedures:

- Through a review of municipal council or commission minutes, other contracts and documentation, and revenue collection reports, determine if the entity is providing internet services within its jurisdiction.
- If yes, determine if there are any private internet services providers within the jurisdiction served by the municipality. If there are, determine that the municipality is only providing advanced internet services that are not otherwise available for a private internet services provider within the jurisdiction served by the municipality, or that the municipality was providing the internet services prior to July 1, 2001.
- If a private internet services provider has informed the municipality that it intends to provide internet services, determine that the municipality has notified its subscribers, as discussed above.

ELECTRONIC GOVERNMENT SERVICES:

9. Compliance Requirement:

- A municipality may charge a convenience fee and may allow municipal departments to collect the convenience fee on selected electronic government services in order to recover the costs of providing those services. (MCA 7-5-4125)

Suggested Audit Procedure:

- If the municipality is providing electronic government services and is charging for such services, review minutes of governing body meetings to determine that a convenience fee has been authorized by the governing body.

TAXES/FEES PAID BY CREDIT CARD:

10. Compliance Requirements:

- A local government entity may accept payment by credit card, debit card, charge card, or other commercially acceptable means from a person making payment to the entity of taxes or fees that are legally authorized and imposed. If payment is made in

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

TAXES/FEES PAID BY CREDIT CARD - continued:

10. Compliance Requirements - continued:

this manner, the tax or fee liability is not discharged and the person has not paid the tax or fee until the local government receives payment or credit from the institution responsible for making the payment or credit. Upon receipt of the payment or credit, the amount is considered paid on the date on which the charge was made by the person paying the tax or fee.

- Upon notice of nonpayment, the local government entity may charge the person who attempted the payment of the tax or fee an amount not to exceed the costs of processing the claim for payment of the tax or fee. The amount that the local government entity charges must be added to the tax or fee due and collected in the same manner as the tax or fee due.
- A person who makes payments to a local government entity as provided in this section may be required to pay a convenience fee of up to 3% of the amount of the payment. The local government entity shall deposit the convenience fees collected in the appropriate fund.
- The local government entity may negotiate and enter into agreements with and pay required fees to financial institutions or credit card companies as necessary to facilitate implementation of this section. A financial institution or credit card company may not prohibit collection of the convenience fee provided for above. Fees paid to a financial institution or credit card company must be paid from an appropriate fund of the local government entity. A local government entity may enter into cooperative agreements with state agencies as necessary to carry out these provisions.

(MCA 7-6-617)

Suggested Audit Procedures:

- Through inquiry, determine if the local government accepts payments by credit card, debt card, charge card, etc. If so, and if a convenience fee is charged for this service, verify that the convenience fee is no more than 3% of the amount of the payment, and verify that the fee is deposited in an appropriate fund. (**Note:** The city general fund will usually be the most appropriate fund.)
- If the local government receives notice of non-payment, determine if the local government charges the payer a fee. If so, verify that the “non-payment” fee is reasonable and does not exceed the costs of processing the claim for payment, and that the fee is added to the tax or fee due and collected in the same manner. Verify that this “non-payment” fee is deposited in an appropriate fund. (**Note:** The city general fund will usually be the most appropriate fund.)

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

TAXES/FEES PAID BY CREDIT CARD - continued:

10. Suggested Audit Procedures - continued:

- Determine that any fees paid to a financial institution or credit card company are paid from an appropriate fund. (**Note:** The city general fund will usually be the most appropriate fund.)

UNCLAIMED PROPERTY:

11. Compliance Requirement:

- Title 70 Chapter 9, Part 8, MCA, pertaining to the Uniform Unclaimed Property Act provides that any property that is presumed abandoned, whether located in this or another state, is subject to the custody of the State of Montana. Property is presumed to be abandoned if it is unclaimed by the apparent owner during the time specified in MCA 70-9-803. **MCA 70-9-802(14)(b), provides that the provisions of the Uniform Unclaimed Property Act are not applicable to property held by a local government entity as defined by MCA 2-7-501.)**

Suggested Audit Procedure:

- **None** – This compliance requirement is included for information only, to address questions related to unclaimed property held by a city or town.

CITIZENS' RIGHT TO KNOW:

12. Compliance Requirements:

- Every citizen has a right to inspect and take a copy of any public writings of this state.
- The following documents, however, may be withheld from public viewing:
 - (a) some library records as provided for in MCA 22-1-1103;
 - (b) some protected burial site locations as provided for in MCA 22-3-807;
 - (c) constitutionally protected records and materials (Information that is constitutionally protected from disclosure is information in which there is an individual privacy interest that clearly exceeds the merits of public disclosure, including legitimate trade secrets, as defined in 30-14-402, and matters related to individual or public safety.) (MCA 2-6-102(3));
 - (d) records pertaining to individual privacy (MCA 2-6-102(4));
 - (e) records pertaining to individual or public safety or security of public facilities if release of the information may jeopardize the safety of facility personnel, the public, or inmates of a facility (MCA 2-6-102(4));

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COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES:

CITIZENS' RIGHT TO KNOW - continued:

12. Compliance Requirements - continued:

- (f) in cases of attachment, the clerk of the court with whom the complaint is filed must not make public the fact of the filing of the complaint or the issuing of such attachment until after the filing of return of service of attachment (MCA 27-18-111); or
- (g) adoption papers and records (MCA 42-6-101).

(MCA 2-6-102 & 104)

Suggested Audit Procedures:

- Inquire of management, and other employees to determine if the city or town has a policy established which addresses the citizens' right to know.
- If not, inquiry of same individuals as to what records a citizen could review and copy if so requested.
- Through observation during the course of the engagement, determine if any citizen requested information from the city or town and received access to those records.